

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**PEARLINE JOHNSON**  
Claimant

VS.

**RAYTHEON AIRCRAFT COMPANY**  
Respondent  
Self-Insured

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Docket No. 163,313

**ORDER**

Respondent appeals an Award entered by Administrative Law Judge John D. Clark on February 20, 1995. The Appeals Board heard oral arguments by telephone conference on July 11, 1995.

**APPEARANCES**

Claimant appeared by and through her attorney, Gerard C. Scott of Wichita, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney, Terry J. Torline of Wichita, Kansas. There were no other appearances.

**RECORD & STIPULATIONS**

The Appeals Board has reviewed the record and has adopted the stipulations listed in the Award of the Administrative Law Judge.

**ISSUES**

In its Application for Review, respondent raises the following issues:

- (1) Whether claimant suffered a personal injury by accident that arose out of and in the course of her employment on the date alleged; and,
- (2) Nature and extent of claimant's disability.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After a review of the whole evidentiary record, considering the briefs and hearing arguments of the parties, the Appeals Board finds as follows:

Claimant alleges that she injured her left breast and left leg on March 22, 1991, when she fell through an open manhole that the cover had been removed by another worker. The rim of the manhole cut her left leg and caught her under the left breast. She

was immediately treated at the respondent's first aid station and was sent home to clean up as the manhole contained water. Claimant returned to work and finished her regular shift even though she was in pain. After March 22, 1991, claimant continued to return to the respondent's first aid station for treatment of her injuries. However, she was finally advised by the respondent to see her personal physician concerning her continuing complaints.

Claimant remains employed by the respondent at a comparable wage. A presumption of no work disability therefore applies and there has been no showing to overcome the presumption. Accordingly, her permanent partial general disability, if any, is limited to her percentage of functional impairment. See K.S.A. 1990 Supp. 44-510e(a). Respondent has paid no workers compensation benefits to the claimant as a result of this claim.

The respondent argues that claimant's left breast pain or rib cage complaints are not causally connected to her work-related injury. After the claimant's injury, she was examined and treated by numerous physicians, including Marilee McBoyle, M.D., who testified that claimant's left breast complaints were not related to her fall at work. Dr. McBoyle saw claimant only once on October 8, 1991.

The physician providing the most extensive treatment for the claimant's chronic pain in her left breast was James M. Donnell, M.D., who saw the claimant some eleven or twelve times over a period of time from June 27, 1992 until October 14, 1994. Dr. Donnell testified in this case, opining that claimant's chronic pain was caused from her fall at work and not the fibrocystic disease of her left breast. He concluded that the source of claimant's pain was in her rib cage, caused from the inflammation of the intercostal nerve. Dr. Donnell explained that the source of claimant's pain was difficult to diagnose because the injury was unusual and the claimant had the inability to relate her medical problems correctly to the examining and treating doctors. It was Dr. Donnell's opinion that, as a result of claimant's work-related injury, her functional impairment, in accordance with the AMA Guides, was five percent (5%).

The Administrative Law Judge found that claimant sustained a permanent injury to her rib cage while working for the respondent on March 22, 1991. He then awarded the claimant a five percent (5%) permanent partial general disability based upon Dr. Donnell's five percent (5%) functional impairment rating.

The Appeals Board affirms the Administrative Law Judge's Award, finding that the claimant's testimony, coupled with Dr. Donnell's testimony, establishes that it is more probably true than not that the claimant, as a result of an injury sustained while working for the respondent on March 22, 1991, has a five percent (5%) permanent partial general disability based upon Dr. Donnell's functional impairment rating.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark, dated February 20, 1995, should be, and is hereby, affirmed as follows:

**AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Pearline Johnson, and against the respondent, Raytheon Aircraft Company, a qualified self-insured, for an accidental injury which occurred on March 22, 1991, and based on an average weekly wage of \$668.36.

The claimant is entitled to 415 weeks of permanent partial general disability compensation at the rate of \$22.28 per week, for a 5% permanent partial general disability, making a total award of \$9,246.20.

As of July 28, 1995, there is due and owing the claimant 227 weeks of permanent partial disability compensation at the rate of \$22.28 per week for a total due and owing of \$5,057.56, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance of \$4,188.64 shall be paid at the rate of \$22.28 per week for 188 weeks until fully paid or further order of the Director of Workers Compensation.

All other findings and orders of the Administrative Law Judge are affirmed and adopted by the Appeals Board as its own.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Gerard C. Scott, Wichita, KS  
Terry J. Torline, Wichita, KS  
John D. Clark, Administrative Law Judge  
David A. Shufelt, Acting Director